



THE CITY OF SAN DIEGO  
**REPORT TO THE CITY COUNCIL**

DATE ISSUED: December 16, 2014 REPORT NO: 15-001  
ATTENTION: Honorable Council President and Members of the City Council  
SUBJECT: Amended and Restated Percentage Lease Between the City and Symphony Asset Pool XVI, LLC, a Delaware Limited Liability Company  
REFERENCE: N/A

REQUESTED ACTION: Authorize the Mayor or his designee to enter into a new Amended and Restated Percentage Lease with Symphony Asset Pool XVI, LLC, a Delaware Limited Liability Company, for the lease of certain City-owned property located in Belmont Park, at 3146 Mission Boulevard, San Diego, CA 92109, which includes the Mission Beach Roller Coaster lease.

Determine that the approval of the Amended and Restated Percentage Lease with Symphony Asset Pool XVI, LLC, a Delaware Limited Liability Company, is categorically exempt from CEQA pursuant to CEQA Guidelines Section 15301, and

Declaring that the Symphony Assets Pool XVI – Amended and Restated Lease Agreement is categorically exempt from the California Environmental Quality Act (CEQA), pursuant to State CEQA Guidelines Sections 15301, as it involves the operation and leasing of an existing public or private facility, with negligible or no expansion of use.

Declaring that the Council of the City of San Diego has determined that an exception to the exemption as set forth in CEQA Guidelines Section 15300.2 does not apply.

STAFF RECOMMENDATION: Adopt the resolution(s).

EXECUTIVE SUMMARY OF ITEM BACKGROUND: The Amended and Restated Percentage Lease with Symphony Asset Pool XVI, LLL, a Delaware Limited Liability Company ("SYMPHONY") was presented to the City Council for approval on September 22, 2014. At that time, Council requested staff to bring a plan to address repairs at the Plunge and resubmit the lease within 60 days. On November 10, 2014, the lease agreement and Plunge repairs were heard in closed session of the City Council. Staff was requested to negotiate a new deal to address additional City Council comments and to bring the revised lease agreement to City Council for approval.

Since September 22, 2014, staff and SYMPHONY representatives had met at least weekly to address Plunge repairs and discussed the lease negotiations. A revised deal has been agreed upon by both parties and is presented to the City Council for approval.

The table below is a comparison of the existing lease, the amended lease that was denied by the City Council on September 22, 2014, and the proposed amended lease that is presented to City Council for approval:

LEASE PROVISIONS	EXISTING LEASE	AMENDED AND RESTATED PERCENTAGE LEASE PRESENTED TO THE CITY COUNCIL ON SEPTEMBER 22, 2014	PROPOSED AMENDED AND RESTATED LEASE
<b>Lessee</b>	Symphony Asset Pool XVI LLC	No change (Symphony Asset Pool XVI LLC)	No change (Symphony Asset Pool XVI LLC)
<b>Permitted Use</b>	Park/visitor-oriented commercial and recreational center.	No change. Park/visitor-oriented commercial and recreational center.	No change. Park/visitor-oriented commercial and recreational center.
<b>Leased Area</b>	7.2079 acres.	7.241 acres.	7.241 acres.
<b>Lease Term Expiration</b>	June 30, 2038 (23 years, and 5 months).	No change. June 30, 2038 (23 years, and 5 months).	No change. June 30, 2038 (23 years, and 5 months).
<b>Option to Extend Term</b>	<ul style="list-style-type: none"> <li>No option to extend, but Lessee has right of first refusal to enter new lease at expiration upon terms agreed between City and Lessee, if City continues to use the land for the permitted uses</li> <li>City may not lease to anyone on terms more favorable than offered to Lessee for the permitted uses</li> </ul>	<ul style="list-style-type: none"> <li>Option to extend, but must be exercised within 5 years of Lease effective date <i>and only valid if</i>: <ul style="list-style-type: none"> <li>(i) Lessee within 3 years spends \$10M in capital improvements and upgrades per Exhibit G ; AND</li> <li>(ii) Lessee pays City a lump sum of \$500,000</li> </ul> </li> <li>If Lessee validly exercises Option then lease term is extended so that the remaining term is 50 years. By way of example, if the Option was validly exercised on January 1, 2020, the lease term would expire on December 30, 2069 rather than June 30, 2038, resulting in a 31 year and 6 months extension.</li> </ul>	<ul style="list-style-type: none"> <li>Option to extend, but must be exercised within 5 years of Lease effective date <i>and only valid if</i>: <ul style="list-style-type: none"> <li>(i) Lessee within 3 years spends \$18M in capital improvements and upgrades per Exhibit G; AND</li> <li>(ii) Lessee pays City a lump sum of \$500,000</li> </ul> </li> <li>If Lessee validly exercises Option then lease term is extended so that the remaining term is 40 years. If Lessee invests additional \$5M in capital improvements after the 30<sup>th</sup> lease year, the term will be extended for additional 10 years. By way of example, if the Option was validly exercised on January 1, 2020, the lease term would expire on December 31, 2059 rather than June 30, 2038, resulting in a 21 year and 6 month extension and on December 31, 2069 if the term is extended for additional 10 years, resulting in 31 year and 6 months extension.</li> </ul>
<b>Minimum Annual Rent</b>	\$863,300	<ul style="list-style-type: none"> <li>\$900,000 if Option to extend <i>not</i> exercised.</li> <li>\$1,100,000 if Option to extend <i>is</i> exercised.</li> </ul>	<ul style="list-style-type: none"> <li>\$900,000 if Option to extend <i>not</i> exercised.</li> <li>\$1,100,000 if Option to extend <i>is</i> exercised.</li> </ul>
<b>Minimum Rent Upward Adjustment</b>	<ul style="list-style-type: none"> <li>No guaranteed upward adjustment, and only adjusted, if at</li> </ul>	Guaranteed upward adjustment every year by 2.5%.	Guaranteed upward adjustment every year by 2.5%.

	<ul style="list-style-type: none"> <li>all, every 3 years</li> <li>Adjusted every 3 years to 80% of actual rents paid during the preceding 3-year period. No decrease is allowed.</li> </ul>		
<b>Percentage Rent</b>	Currently fixed at 5% of gross revenue from all operations.	<ul style="list-style-type: none"> <li>Varies according to the use from 3% to 50% of gross revenue from all operations.</li> <li>As applied to 2013 gross revenue equates to approximately a 5.3% blended rate.</li> </ul>	<ul style="list-style-type: none"> <li>Varies according to the use from 3% to 50% of gross revenue from all operations.</li> <li>As applied to 2013 gross revenue equates to approximately a 5.3% blended rate.</li> </ul>
<b>Percentage Rent Upward Adjustment</b>	<ul style="list-style-type: none"> <li>Percentage rent is eligible for upward adjustment every 10 years</li> <li>Adjustment is by mutual agreement of Lessee and City</li> <li>If no agreement is reached, then percentage rent remains the same, unless City elects to go to appraisal, which appraisal shall establish the percentage rent for the next 10-year period</li> </ul>	<ul style="list-style-type: none"> <li>Percentage rent is eligible for upward adjustment every 10 years at the option of City</li> <li>Adjustment is by mutual agreement of the Lessee and City. If no agreement is reached, then percentage rent is established by appraisal, which appraisal shall establish the percentage rent for the next 10-year period.</li> </ul>	<ul style="list-style-type: none"> <li>Percentage rent is eligible for upward adjustment every 10 years at the option of City</li> <li>Adjustment is by mutual agreement of the Lessee and City. If no agreement is reached, then percentage rent is established by appraisal, which appraisal shall establish the percentage rent for the next 10-year period.</li> </ul>
<b>Coaster Acquisition Provisions</b>	<ul style="list-style-type: none"> <li>No provisions relating to ownership of the San Diego Coaster Company, but Lessee has right of first refusal to enter new lease for the Coaster premises at expiration of the existing Coaster Lease upon terms agreed between City and Lessee, if City continues to use the land for the permitted uses</li> <li>City may not lease to anyone on terms more favorable than offered to Lessee for the permitted uses</li> </ul>	<ul style="list-style-type: none"> <li>If Lessee within 180 days of City Council approval of this Lease acquires complete ownership of the San Diego Coaster Company (current holder of the Coaster Lease), then upon notice from Lessee: <ul style="list-style-type: none"> <li>(i) the premises of the Coaster Lease will become part of Lessee's premises</li> <li>(ii) minimum rent will increase to \$1,024,000 adjusted 2.5% upward annually; AND</li> <li>(iii) percentage rent for the Coaster Ride will increase to 10%</li> </ul> </li> <li>In addition, if Lessee exercises its Option to extend the Lease, then: <ul style="list-style-type: none"> <li>(i) minimum rent will increase to \$1,300,000 adjusted 2.5% upward annually; AND</li> </ul> </li> <li>(ii) Lessee will be required to</li> </ul>	<ul style="list-style-type: none"> <li>Lessee acquired complete ownership of the San Diego Coaster Company (current holder of the Coaster Lease), on November 7, 2014. The percentage rent is increased to 10% as of date of acquisition. Upon approval of the lease by City Council: <ul style="list-style-type: none"> <li>(i) the premises of the Coaster Lease will become part of Lessee's premises</li> <li>(ii) minimum rent will increase to \$1,024,000 adjusted 2.5% upward annually; AND</li> </ul> </li> <li>In addition, if Lessee exercises its Option to extend the Lease, then: <ul style="list-style-type: none"> <li>(i) minimum rent will increase to \$1,300,000 adjusted 2.5% upward annually; AND</li> <li>(ii) Lessee will be required to expend \$2,500,000 on improvements to the coaster premises within</li> </ul> </li> </ul>

		expend \$2,500,000 on improvements to the coaster premises (in addition to the prior \$18,000,000 improvement obligation).	first 5 years (in addition to the prior \$18,000,000 improvement obligation).
<b>Capital Expenditures</b>	No initial capital investment. Lessee is required every 4 years to spend 2.5% of gross sales on capital expenditures, but in turn receives a dollar-for-dollar credit against gross sales thereby reducing percentage rent.	<ul style="list-style-type: none"> <li>Initial minimum investment \$10,000,000.</li> <li>Lessee receives <i>no credit</i> against gross sales, regardless of the dollar amount spent on capital expenditures</li> <li>After 30 years, Lessee is obligated to spend an additional \$5,000,000 in capital improvements.</li> </ul>	<ul style="list-style-type: none"> <li>Initial minimum investment \$18,000,000.</li> <li>Lessee receives <i>no credit</i> against gross sales, regardless of the dollar amount spent on capital expenditures</li> <li>After 30 years, Lessee is obligated to spend an additional \$5,000,000 in capital improvements.</li> </ul>
<b>Rent Credit for Original Lease Improvements</b>	<ul style="list-style-type: none"> <li>Lessee has approximately \$2,368,474 of existing rent credit from Public Improvements constructed previously and may be applied to 50% of rent owing above \$70,000</li> <li>This rent credit will be exhausted in approximately 5-6 years</li> </ul>	No change  (Lessee has approximately \$2,368,474 of existing rent credit from Public Improvements constructed previously and may be applied to 50% of rent owing above \$70,000. This rent credit will be exhausted in approximately 5-6 years.)	No change  (Lessee has approximately \$2,368,474 of existing rent credit from Public Improvements constructed previously and may be applied to 50% of rent owing above \$70,000. This rent credit will be exhausted in approximately 5-6 years.)
<b>Plunge Improvement/Repair Rent Credit</b>	If Lessee desires redevelopment or adaptive reuse of the Plunge building, Lessee may request additional rent credit to be issued in City's discretion	<ul style="list-style-type: none"> <li>Upon completion of Plunge repairs, Lessee shall receive an additional rent credit not to exceed the lesser of \$5,200,000 or the actual cost of the Plunge repairs, which will be added to the existing rent credit and applied identically.</li> <li>Lessee is obligated, at Lessee's expense, to pay for any costs over and above \$5,200,000 (not to be off-set by any rent credit).</li> <li>Lessee shall establish and implement a regular Plunge pool and building maintenance program.</li> </ul>	<ul style="list-style-type: none"> <li>Upon completion of Plunge repairs, Lessee shall receive an additional rent credit not to exceed the lesser of \$5,200,000 or the actual cost of the Plunge repairs, which will be added to the existing rent credit and applied identically.</li> <li>Lessee is obligated, at Lessee's expense, to pay for any costs over and above \$5,200,000 (not to be off-set by any rent credit).</li> <li>Lessee shall establish and implement a regular Plunge pool and building maintenance program.</li> <li>5-year facilities assessment reports shall be prepared at Lessee's expense by an engineer, selected by Lessee and approved by City.</li> <li>Lessee is responsible to correct all repairs and maintenance items.</li> </ul>
<b>General Parking</b>	<ul style="list-style-type: none"> <li>Lessee shall maintain public parking facilities on the Premises with no less than 325 public parking spaces</li> <li>Subject to City Council, and any other required approvals,</li> </ul>	No change. (Lessee shall maintain public parking facilities on the Premises with no less than 325 public parking spaces. Subject to City Council, and any other required approvals, Lessee may charge a parking fee in the east lot, subject to payment of percentage rent).	No change. (Lessee shall maintain public parking facilities on the Premises with no less than 325 public parking spaces. Subject to City Council, and any other required approvals, Lessee may charge a parking fee in the east lot, subject to payment of percentage rent).

	Lessee may charge a parking fee in the east lot, subject to payment of percentage rent		
<b>Valet Parking</b>	<ul style="list-style-type: none"> <li>• Lessee, subject to annual City approval, may establish a 9-stall valet parking drop-off zone in the north lot.</li> <li>• Valet parking revenue is subject to percentage rent.</li> </ul>	<ul style="list-style-type: none"> <li>• Lessee, subject to annual City approval, may establish a 9-stall valet parking drop-off zone in the north lot.</li> <li>• Valet parking revenue is subject to percentage rent.</li> <li>• Lessee will invest \$2,500,000 to reconfigure City-owned adjacent parking lot (South Parking) to create 90-valet parking spaces and 18 free parking spaces within first 3 years of the term.</li> <li>• Valet parking will be approved under a separate permit.</li> <li>• Valet parking revenue is subject to 5% of gross revenue rent.</li> </ul>	Same as in the existing lease.
<b>Community Meeting Room</b>	Lessee must provide access for the general public to a community meeting room for public service use.	No fundamental change. For meetings 15 person or less – 10 day advance notice. For meetings 16 person or more – 90 days’ advance notice. (Lessee must provide access for the general public to a community meeting room for public service use).	No fundamental change For meetings 15 person or less – 10 day advance notice. For meetings 16 person or more – 90 days’ advance notice. (Lessee must provide access for the general public to a community meeting room for public service use).
<b>Accessory Use Permit</b>	<ul style="list-style-type: none"> <li>• City, subject to annual renewal, shall grant a separate Accessory Use Permit allowing beach concessions and service of food on the beach (but no alcohol) on the western boundary of the premises</li> <li>• Lessee shall pay minimum and percentage rent</li> </ul>	<ul style="list-style-type: none"> <li>• City, subject to up to 3-year renewal periods, shall grant a separate Accessory Use Permit allowing beach concessions and service of food on the beach (but no alcohol) on the western boundary of the premises (specific boundaries to be approved)</li> <li>• Lessee shall pay minimum and percentage rent.</li> <li>• Lessee must obtain all required permits and approvals.</li> </ul>	<ul style="list-style-type: none"> <li>• City, subject to up to 2-year renewal periods, shall grant a separate Accessory Use Permit allowing beach concessions and service of food on the beach (but no alcohol) on the western boundary of the premises (specific boundaries to be approved)</li> <li>• Lessee shall pay minimum and percentage rent.</li> <li>• Lessee must obtain all required permits and approvals.</li> </ul>
<b>Assignments</b>	Assignments are subject to consent of City.	<ul style="list-style-type: none"> <li>• Assignments are subject to consent of City.</li> <li>• In addition, on assignment or a majority sublease, Lessee must pay City 2% of the gross amount paid to Lessee for the assignment or majority subleases.</li> </ul>	<ul style="list-style-type: none"> <li>• Assignments are subject to consent of City.</li> <li>• In addition, on assignment or a majority sublease, Lessee must pay City 2% of the gross amount paid to Lessee for the assignment or majority subleases.</li> </ul>
<b>Subleases</b>	City only to approve subleases of more than 5,000 feet.	City must approve all subleases.	City must approve all subleases.
<b>Prevailing Wage</b>	No provisions.	Extensive language requiring payment by Lessee of prevailing wage and compliance with prevailing wage law.	Extensive language requiring payment by Lessee of prevailing wage and compliance with prevailing wage law.
<b>Hazardous Substances</b>	No provisions.	Extensive language requiring the removal and remediation of any hazardous substances by Lessee, as	Extensive language requiring the removal and remediation of any hazardous substances by Lessee, as well

		well as indemnification of City.	as indemnification of City.
<b>Disabled Access Compliance</b>	No provisions.	Extensive language requiring ADA compliance by Lessee.	Extensive language requiring ADA compliance by Lessee.
<b>Equal Benefits</b>	No provisions.	Payment of equal benefits to spouses with domestic partners required.	Payment of equal benefits to spouses with domestic partners required.
<b>Drug-Free Workplace</b>	No provisions.	Must adopt and enforce a policy to maintain a drug-free workplace.	Must adopt and enforce a policy to maintain a drug-free workplace.
<b>Water Quality Assurance</b>	No provisions.	Must comply with all applicable laws and regulations regarding water quality assurance and storm water management.	Must comply with all applicable laws and regulations regarding water quality assurance and storm water management.
<b>Local Business and Employment</b>	No provisions.	Must use reasonable efforts to contract with, and employ, local firms and residents for work associated with Lease.	Must use reasonable efforts to contract with, and employ, local firms and residents for work associated with Lease.

SYMPHONY is required to operate and maintain the Plunge per the terms of the existing lease. If a new lease proposal which includes full capital repairs of the Plunge is not approved, SYMPHONY will make all repairs as required per the terms of its existing lease at the Plunge and in compliance with all applicable laws. Repairs will commence upon receiving all applicable City permits and approvals and will be completed approximately 6 months from the commencement date. However, as a long term solution, the Plunge will require refurbishment and upgrades to its structure including the pool, which SYMPHONY is not obligated to complete under the terms of the current lease. If a new amended and restated lease, which will require SYMPHONY to make repairs in exchange for rent credits is not approved, the Plunge will need to be placed in the City’s Capital Improvement Project (CIP) queue for future repair and get prioritized along with all the City’s other CIP projects.

**FISCAL CONSIDERATIONS:** If the proposed amended and restated lease is approved, at least \$415,000 of rent will be deposited into General Fund 100000 annually. In addition, the City will continue to deposit \$70,000 annually into a special fund to be used for amelioration of traffic problems in the Mission Beach community and for enhancing community landscaping.

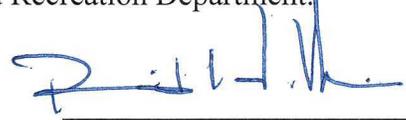
**EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):** Work Force Report and Equal Benefit Ordinance Certificate of Compliance are attached.

**PREVIOUS COUNCIL and/or COMMITTEE ACTION:** This action was heard in Closed Session on July 23, 2013 and at the City Council meeting on September 22, 2014 and in Closed Session on November 10, 2014.

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:** Letters of support for valet parking received from the Mission Beach Town Council and Mission Beach Precise Planning Board are attached. On October 21, 2014, the proposed lease was docketed as information item on the agenda of the Mission Beach Precise Planning Board. Community voiced its strong support of the proposed lease.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: Local community, other City lessees in Mission Beach and Mission Bay Park, City Park and Recreation Department.

  
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Originating Department

  
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Deputy Chief/Chief Operating Officer